

## SENATE BILL NO. 402

INTRODUCED BY J. PETERSON, BALES, BARKUS, BERGREN, BRENDEN, D. BROWN, R. BROWN,  
T. BROWN, CAMPBELL, ESP, HANSEN, HINKLE, HOLLANDSWORTH, JONES, KEANE, KERNS, LAKE,  
MCCHESNEY, MCGEE, MCNUTT, MILBURN, SALES, SHOCKLEY, STOKER, STORY, TUTVEDT

A BILL FOR AN ACT ENTITLED: "AN ACT IDENTIFYING AND CLARIFYING THE PRIVATE PROPERTY  
INTERESTS THAT ARE PROTECTED FROM GOVERNMENTAL TAKING WITHOUT JUST COMPENSATION;  
EXTENDING THE REQUIREMENT FOR THE PAYMENT OF JUST COMPENSATION TO REGULATORY  
TAKINGS; AMENDING SECTION 70-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND~~  
~~A RETROACTIVE APPLICABILITY DATE.~~"

WHEREAS, the Legislature has the highest interest in vindicating private property rights and in protecting  
private property rights and Montana business from wrongful and uncompensated government takings; and

WHEREAS, section 70-1-104, MCA, specifically designates several categories of property in which a  
property interest may be held under Montana law; and

WHEREAS, the Legislature desires to clarify and codify what constitutes a private property interest under  
the Montana Constitution for which just compensation must be paid when the property interest is taken for public  
purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 70-1-104, MCA, is amended to read:

**"70-1-104. In what things property interests may exist. (1)** There may be ownership of:

~~(1)~~(a) all inanimate things ~~which~~ that are capable of appropriation or of manual delivery;

~~(2)~~(b) all domestic animals;

~~(3)~~(c) all obligations;

~~(4)~~(d) ~~such~~ products of labor or skill such as the composition of an author, the goodwill of a business,  
trademarks, and signs; ~~and~~

~~(5)~~(e) rights created or granted by statute;

(f) the goodwill and ongoing concern value of a lawful business;

(g) the right to carry on lawful business, the value of a business, and the economic benefits derived from a business;

(h) intangible business interests;

(i)(+)(G) a license to pursue a business or livelihood, including state licenses that have been approved and issued and for which the holder has a legitimate claim of entitlement and the property interests associated with the license, including any authorized ability to freely transfer or dispose of the license;

(j)(+)(H) real property and fixtures;

(k)(+)(I) personal property and appurtenances;

(l)(+)(J) water rights and beneficial water use permits or authorizations; and

(m)(+)(K) intangible property.

(2) (a) The property interests described in subsection (1) are protectable private property interests under Article II, section 29, of the Montana constitution for which compensation may be claimed and for which just compensation must be awarded when a court finds that the property has been damaged or taken for a public use by means of eminent domain or a regulatory taking.

(b) Subsection (2)(a) may not be read to limit the types of property interests or what may be considered property recognized under the constitution or by law for which just compensation may be claimed and awarded, such as property interests recognized and protected under Article II, section 3, of the Montana constitution and property as defined in 15-1-101.

(3) The legislature intends that subsection (2)(a) be read as broadly as the United States supreme court construes property.

(4) (A) THIS SECTION DOES NOT AFFECT THE:

(i) ENFORCEMENT OF THE TERMS OF A LICENSE, PERMIT, OR AUTHORIZATION, INCLUDING REQUIREMENTS IMPOSED BY FEDERAL LAW;

(ii) POWER OR AUTHORITY OF A COUNTY, CITY, OR TOWN TO LAWFULLY ENACT VALID ZONING, SUBDIVISION, OR OTHER LAND USE REGULATIONS OR ORDINANCES THAT ARE REQUIRED BY LAW OR THAT ARE NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE.

(B) COMPENSATION MAY NOT BE CLAIMED UNDER SUBSECTION (2) FOR ACTIONS TAKEN PURSUANT TO SUBSECTION (4)(A).

(5) IN ORDER TO BE PROTECTED UNDER SUBSECTION (2), THE PROPERTY INTERESTS DESCRIBED IN SUBSECTION (1) MUST BE OWNED BY THE CLAIMANT AT THE TIME OF THE GOVERNMENT ACTION FOR WHICH A TAKING IS BEING CLAIMED.

1 IN THE CASE OF A BUSINESS INTEREST, THE BUSINESS MUST HAVE BEEN AUTHORIZED BY LAW AND MUST HAVE BEEN IN  
2 EXISTENCE AT THE TIME OF THE GOVERNMENT ACTION FOR WHICH A TAKING IS BEING CLAIMED."

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4 NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable  
5 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
6 remains in effect in all valid applications that are severable from the invalid applications.

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8 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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10 ~~NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the~~  
11 ~~meaning of 1-2-109, to proceedings that have been commenced but have not been completed on [the effective~~  
12 ~~date of this act].~~

13 - END -